

REMARKS

Reconsideration and reversal of the rejections presented in the Office Action dated February 3, 2006 are respectfully requested in light of the following. The present application includes claims 1-24. With this amendment, applicants have amended claims 1, 2, 5-8, 11, 18, and 20-23, and added new claims 25-31.

The Examiner is thanked for all of the courtesies extended to the undersigned during the telephonic interview of May 1, 2006. During the interview, independent claims 1 and 12 were discussed in view of U.S. Patent No. 4,653,562 to Moss et al. (hereinafter "Moss et al.").

In the aforementioned Office Action, the Examiner rejected claims 1-24 under 35 U.S.C. § 102(b) as being anticipated by Moss et al.

Moss et al. discloses an open air wire screen structure or safety guard including attachment rails 18 and 22 designed for temporary and reusable placement in the window channels of motor vehicles. The top rail 18 has a double channel 19-20 and an upright fin 21 above the double channel 19-20. The bottom rail 22 has a double channel 23-24 and a single channel 26 below the double channel 23-24 (Figs. 9 and 10). The safety guard is attached to an existing vehicle window channel in such a manner that single channel 26 of the bottom rail 22 is placed onto the upper edge of the open window glass, and the upright fin 21 of the top rail 18 is positioned to insert into the upper window channel. Moving the window glass slightly upward secures the upright fin 21 into the upper window channel (Col. 3, lines 50-57).

In the aforementioned Office Action, the Examiner indicated that the applicants' arguments with respect to claim 1 were more specific than the language of the claim. The Examiner indicated that claim 1 was drawn to a window barrier *per se* and not to the combination of a window barrier with a window channel and window pane. The Examiner indicated during the aforementioned telephonic interview that a combination claim reciting both the window barrier and the supporting door would be more favourably received.

In response, claim 1 has been amended to positively recite elements of the window barrier in combination with elements of a vehicle door. It is respectfully submitted that Moss et al. does not include a first securing member including a retaining portion operably coupled with a door trim and positioned in spaced relation to a window channel. More particularly, the

upper rail 18 of Moss et al. includes an upright fin 21 which is positioned to insert into the upper window channel. The Moss et al. window safety guard is configured to be positioned only within an open window and secured in the window channel. In contrast, the invention recited in amended claim 1 is secured in spaced relation to the window channel such that the window panel may be raised without interference from the window barrier.

For at least the foregoing reasons, it is respectfully submitted that claim 1, and the claims dependent therefrom, are in condition for allowance.

Independent claim 12 recites, *inter alia*, a window barrier comprising a lower frame member including a panel rest portion and a retaining flange, and a connecting portion connecting the panel rest portion and the retaining flange. These elements are clearly missing in the Moss et al. reference. Claim 12 further recites that the panel rest portion is configured to rest against the interior surface of the vehicle door, and that the retaining flange is configured to be received within a slot formed within the door intermediate the interior surface and the window panel. Moss et al. also fails to disclose these functional elements as recited in independent claim 12. Moreover, there is no disclosure in Moss et al. of a lower frame member including either a panel rest portion configured to rest against the interior surface of the vehicle door, or a retaining flange configured to be received within the slot formed within the door intermediate the interior surface and the window panel. With further reference to Moss et al., the bottom rail 22 includes channel 26 which receives the upper edge of the open window glass. There is no structure in Moss et al. that could be considered a panel rest portion in combination with a retaining flange as recited in independent claim 12.

It is noted that there is nothing inherently wrong with defining some part of an invention in functional terms. See M.P.E.P. § 2173.05(g). Moreover, functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). M.P.E.P. § 2173.05(g) clearly provides that "a functional limitation must be evaluated and considered, just like any other limitation of the claim, for which it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." As such, it is requested that the Examiner give proper consideration to all elements recited in claim 12, including functional limitations.

For at least the foregoing reasons, it is respectfully submitted that claim 12, and the claims dependent therefrom, are in condition for allowance.

In the aforementioned Office Action, the Examiner indicated that arguments in support of claim 18 were more specific than the claim recitations. More particularly, the Examiner indicated that claim 18 was drawn to a window barrier *per se* and not to the combination of a window barrier with a door frame and a door.

In response, claim 18 has been amended to positively recite a window barrier in combination with a vehicle door supported within the door frame. It is respectfully submitted that Moss et al. fails to disclose a window barrier comprising an upper securing member coupled to a barrier frame proximate an upper end thereof, and including a portion received intermediate the door frame and the door. Additionally, Moss et al. fails to disclose that movement of the upper end of the barrier frame in a first direction is prevented by the door frame, and that movement of the upper end of the barrier frame in a second direction opposite the first direction is prevented by the door. Moss et al. provides a top rail 18 having an upright fin 21 which is configured to be inserted into the upper window channel. There is simply no structure disclosed in Moss et al. which is received intermediate the door frame and the door and restricts movement of the barrier frame in the manner recited in amended independent claim 18.

For at least the foregoing reasons, it is respectfully submitted that claim 18, and the claims dependent therefrom, are in condition for allowance.

New claim 25 recites a window barrier including an upper frame member and a clip configured to releasably secure the upper frame member to a door, the clip having a connector and first and second arms extending upwardly from the connector. Claim 25 also recites that the first arm is coupled to the upper frame member and the second arm is positioned in spaced relation to the first arm and the window channel and is configured to operably couple with the door trim. Claim 25 further recites a fastener coupling the first arm to the upper frame member. It is respectfully submitted that Moss et al. fails to disclose a clip including a first arm and a second arm extending upwardly from a connector, alone or in combination with a fastener coupling the first arm to the upper frame member. As such, it is respectfully submitted that claim 25, and the claims dependent therefrom, are in condition for allowance.

New claim 28 recites a window barrier configured to be coupled to a vehicle door supported within a door frame, the window barrier comprising a barrier frame including upper and lower ends, and an upper clip coupled to the barrier frame proximate the upper end and including an outwardly extending first arm, and a downwardly extending second arm. Claim 28 further recites a connector connecting the first arm and the second arm, wherein the first arm extends in a substantially horizontal plane and the second arm extends substantially perpendicular to the first arm. It is respectfully submitted that Moss et al. fails to disclose an upper clip including a first arm extending outwardly in a substantially horizontal plane and a second arm extending downwardly substantially perpendicular to the first arm as recited in independent claim 28. As such, it is respectfully submitted that claim 28, and the claims dependent therefrom, are in condition for allowance.

For at least the foregoing reasons, it is respectfully submitted that all of the solicited claims are in condition for allowance. Such action is respectfully requested.

If necessary, applicants request that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this amendment be charged to the account of Baker & Daniels, Deposit Account No. 02-0390.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

Respectfully submitted,



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